

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY*In the Matter of*

1998 Biennial Regulatory Review—  
Review of International Common Carrier  
Regulations

IB Docket No. 98-118

**COMMENTS OF TYCO SUBMARINE SYSTEMS LTD.**

Tyco Submarine Systems Ltd. ("TSSL") supports the Commission's proposals to simplify and streamline its rules for international common carriers building and carrying traffic on undersea cable transmission facilities.<sup>1</sup> As one of the world's leading integrated suppliers of undersea communication systems and services and the only such U.S.-based supplier, TSSL has a strong interest in ensuring that the Commission continues to foster competition in the market for undersea cable systems and system capacity. By eliminating discriminatory rules and reducing the regulatory burden associated with the construction and operation of submarine cable systems, the Commission would further encourage investment in the cable systems that TSSL builds and maintains. The Commission would also ensure that cable system operators and carriers—TSSL's customers—can meet the ferocious demand for bandwidth to support a variety of international services.

TSSL designs, manufactures, installs, and provides maintenance services for undersea cable systems; its annual revenues from these activities exceed \$1 billion. Operating a modern

<sup>1</sup> See 1998 Biennial Regulatory Review—Review of International Common Carrier Regulations, Notice of Proposed Rulemaking, FCC 98-149 (rel. July 14, 1998) ("NPRM").

fleet of cable ships stationed around the world, TSSL has successfully installed approximately 265,000 kilometers of undersea communications systems.<sup>2</sup> TSSL is currently involved in the Alaska United, Americas-II, Atlantic Crossing, China-U.S., Columbus-III, Farland, FLAG, Global West, Guam-Philippines, Lev, Pacific Crossing, Pan American Crossing, Petrobras, Rembrandt, SEA-ME-WE 3, TAT 12/13 Upgrade, and TPC-5 Upgrade submarine cable projects.

TSSL endorses the two principal proposals contained in the Commission's NPRM:

(1) elimination of the presumption against use of non-U.S.-licensed submarine cable systems by carriers, and (2) elimination of other burdensome administrative requirements for the construction and use of undersea cable transmission facilities. Both of these proposals recognize that competition in the provision of submarine cable systems and system capacity renders obsolete certain portions of the Commission's Section 214 rules.

#### **I. THE COMMISSION SHOULD NOT DISCRIMINATE AGAINST NON-U.S.-LICENSED SUBMARINE CABLE SYSTEMS**

TSSL supports the Commission's proposal to eliminate the presumption against the use of non-U.S.-licensed submarine cable systems.<sup>3</sup> This presumption is inconsistent with the current international regulatory environment and with commercial reality, harming the businesses of U.S. cable suppliers and carriers.

*First*, the presumption against use of non-U.S.-licensed submarine cable systems is inconsistent with the deregulatory spirit of the Commission's other recent rule changes relating to submarine cable following the World Trade Organization ("WTO") Basic Telecom

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<sup>2</sup> This figure includes installations since the formation of Submarine Systems, Inc. ("SSI"), in 1990. AT&T Corp. sold SSI to Tyco International (U.S.), Inc. ("Tyco"), in 1997. Tyco combined SSI with another operating subsidiary, Simplex Technologies, Inc., to form TSSL.

<sup>3</sup> NPRM ¶¶ 23-28.

Agreement.<sup>4</sup> Following that agreement, the Commission noted that “[t]he changes resulting from implementation of WTO Members’ commitments, along with new technologies and routing configurations, will open foreign markets and increase competition in the global telecommunications service market.”<sup>5</sup> The Commission has already created a rebuttable presumption that applications to land and operate submarine cables from WTO Members do not raise competitive concerns.<sup>6</sup> The Commission also eliminated its “effective competitive opportunities” test—which required reciprocity in cable landing and operation rights as a precondition of approval—for the landing and operation of submarine cables from WTO Member countries in the United States.<sup>7</sup> Finally, the Commission eliminated restrictions on foreign ownership of cable landing stations.<sup>8</sup> Compared to these changes, the presumption is a throwback to the illiberal era of nationalistic regulation.

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<sup>4</sup> The presumption against non-U.S.-licensed systems may actually violate U.S. commitments in the General Agreement on Trade in Services (“GATS”) and the WTO Basic Telecom Agreement by failing to abide by most-favored-nation treatment, national treatment, and market access commitments with respect to (1) access to and use of public telecommunications transport networks and services and (2) basic telecommunications services. *See* GATS Annex on Telecommunications, art. V(a); Communication from the United States, WTO Doc. S/GBT/W/1/Add.2/Rev. 1 (Feb. 15, 1997), annexed to the Fourth Protocol of the General Agreement on Trade in Services. The presumption subjects non-U.S.-licensed submarine cable systems and carriers using capacity on those systems to regulatory processes and potentially disqualifying criteria that do not apply to U.S.-licensed systems.

<sup>5</sup> *In the Matter of Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report & Order and Order on Reconsideration*, 12 FCC Rcd. 23891 ¶ 50 (1997) (“*Foreign Participation Order*”).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* ¶ 93.

<sup>8</sup> *Id.* ¶ 96.

**Second**, the current presumption provides no clear public interest benefit. As the Commission acknowledges in its NPRM, since the issuance of the *Streamlining Order*<sup>9</sup> in 1996, no party has objected on public interest grounds that the Commission prohibit the use of a non-U.S.-licensed submarine cable system.<sup>10</sup> The Commission should therefore eliminate this rule on the grounds that it is disused and provides no discernable benefit to the public.

**Third**, the current presumption discourages submarine cable construction and limits carrier choice. This presumption harms TSSL directly, given that TSSL designs, constructs, installs, and maintains submarine cable systems without regard to the nationalities of the regulators licensing those systems. But the presumption also harms TSSL's customer-carriers by distorting their incentives in obtaining cable capacity. Ultimately, this harms U.S. businesses and consumers by encouraging inefficient routing of traffic over international submarine cable facilities.

For these reasons, the Commission should eliminate the presumption against use of non-U.S.-licensed submarine cable systems. Consistent with this objective, it should also revise its rules and reform its "exclusion list" to permit carriers with global Section 214 authorizations to use any submarine cable facilities, regardless of whether or not the Commission licensed those facilities.

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<sup>9</sup> See *Streamlining the International Section 214 Authorization Process and Tariff Requirements, Report & Order*, 12 FCC Rcd. 12884 (1996) ("*Streamlining Order*").

<sup>10</sup> NPRM ¶ 25.

## **II. THE COMMISSION SHOULD CONTINUE TO ELIMINATE BURDENSOME APPLICATION REQUIREMENTS FOR SUBMARINE CABLE LANDING LICENSES**

TSSL also supports the Commission's proposals to reduce the unnecessary burdens for submarine cable landing license applications. At present, the licensing process for submarine cable systems is onerous and lengthy, deterring investors in those systems until they are licensed. TSSL applauds the Commission's recognition that the current licensing process is burdensome, due in large part to the Submarine Cable Landing License Act, the provisions of which are not subject to Commission forbearance.<sup>11</sup> Within these limitations, the Commission should continue to reform the regulatory process for submarine cable landing licenses.

Specifically, the Commission should eliminate the requirement for a separate Section 214 authorization when applying for a common carrier submarine cable landing license.<sup>12</sup> The current requirements are duplicative and serve no public interest objective.<sup>13</sup> This requirement for a separate Section 214 application becomes particularly burdensome and wasteful in the case of systems proposed by carrier consortia. In many consortia situations, the carriers have already compiled the extensive information required by Section 214 in order to obtain an international facilities-based authorization. But the current rules for common carrier submarine cable systems require that they regenerate that information to obtain Section 214 authority for new lines, and

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<sup>11</sup> See *id.* ¶ 30.

<sup>12</sup> *Id.* ¶¶ 29-31.

<sup>13</sup> At some point in the not-so-distant future, the Commission must also consider its practice of imposing separate regulatory requirements on common carrier and non-common carrier submarine cable systems. Competition in markets for cable systems and cable capacity is already robust and is only further encouraged by new construction by cable suppliers. Such competition will only reduce the need for additional regulations currently placed on common carrier systems.

file hundreds of pages of duplicative information. The Commission and the public would be better served by a unified Section 214 authorization process which grants simultaneously the authorizations for facilities-based services and new lines.

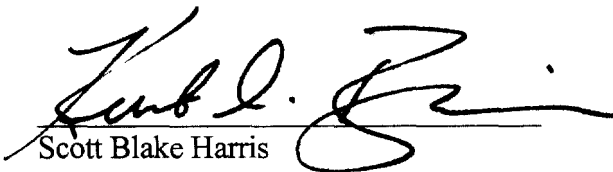
### CONCLUSION

For the foregoing reasons, the Commission should adopt its proposals to eliminate (1) the presumption against use of non-U.S.-licensed submarine cable systems by carriers and (2) other burdensome requirements for submarine cable landing license applications.

Respectfully submitted,

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Dated: August 13, 1998

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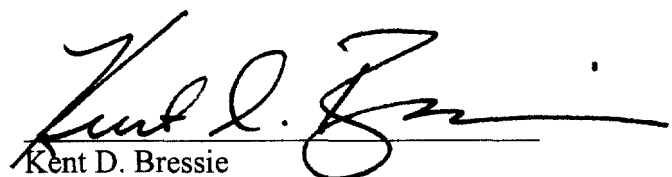
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